Revised 10-09-02

ORDINANCE ~~15-02~~ 19-02

AN ORDINANCE AMENDING THE ZONING ORDINANCE TO DEFINE ADULT ENTERTAINMENT BUSINESSES, PROVIDE FOR CONDITIONAL USE PERMITS FOR SAID BUSINESSES, AND TO DEFINE THE DISTRICTS IN WHICH SAID BUSINESSES MAY BE LOCATED WITHIN THE VILLAGE OF CUSTAR.

WHEREAS, adult entertainment businesses including those that exhibit nudity for entertainment purposes and those that sell or exhibit material depicting sexual activities have been established in many communities; and

WHEREAS, the Courts have determined that such businesses are protected by the First Amendment of the U.S. Constitution and therefore can not be prohibited from locating in a community, but that the community can regulate the area(s) where said business will be permitted to be located and can establish certain standards for the location and operation of said businesses to lessen or eliminate the detrimental affect said businesses could have if they were located in or near residences, churches, schools, and playground areas commonly frequentanted by families and children; and

WHEREAS, the purpose of this amendment to the Zoning Ordinance of the Village of Custar is to promote the public health, safety and welfare through the regulation of adult entertainment businesses. The intent of these provisions is to regulate entertainment businesses, as define herein, in such a manner as to prevent the erosion of the character of the surrounding neighborhoods and to prohibit the establishment of such businesses in close proximity to residential and agricultural zone areas, schools, churches, parks and playgrounds within the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CUSTAR, WOOD COUNTY, OHIO:

SECTION I. That Article IV of the Zoning Ordinance of the Village of Custar shall be amended to read as follows:

"Article IV. Section 3 "C" Commercial District.

In the "C" Commercial District except as hereinafter provided no building or premises shall be used and no building shall be erected or structurally altered except for one or more of the following uses:

1.) Retail stores and shops, such as grocery, meat market, bakery, hardware, furniture, electric appliance store, plumbing and heating shop, drug store, laundry, automobile sales office, garage and service station, barber shop, beauty shop, shoe repair shop, feed and poultry shop, frozen food processing and storage lockers.

2.) Hotels, motels, theaters, restaurants, bars and nightclubs, and bus stations.

3.) Banks, business offices, newspaper and printing shops, telephone exchanges, animal hospitals.

4.) Music, dancing, trade or technical schools.

5.) Recreation room such as bowling alleys, pool halls, skating rinks.

Conditional Uses: Board approval required.

1.) Adult bookstore

2.) Adult entertainment

3.) Adult movie house

4.) Adult video store

5.) Massage parlor

"Article IV, Section 4 "I" Industrial District"

In the "I" Industrial district, no building or premises shall be used and no building shall be erected or structurally altered, except for the following:

1.) General manufacturing

2.) Manufacturing, sale and storage of building materials

3.) Transport and trucking terminals

4.) Wholesale business

5.) Warehousing

6.) Grain elevators

7.) Agricultural

8.) Food processing

Correctional Uses: Board approval required.

1.) Adult bookstore

2.) Adult entertainment

3.) Adult movie house

4.) Adult video store

5.) Massage parlor

SECTION II. That the following terms shall be added to the Village of Custar Zoning Ordinance Article III. Definitions:

a.) "Adult Entertainment Business" means an adult bookstore, adult motion picture theater, adult drive-in motion picture theater, or any adult-only entertainment establishment as defined.

b.) "Adult Bookstore" means an establishment which utilizes fifteen percent (15%) (this may include video rental stores) or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display by coin or slug-operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices, or both; books, magazines, other periodicals, films, tapes and cassettes which are distinguished by their emphasis on adult materials as defined in this section.

c.) "Adult Motion Picture Theater" means an enclosed motion picture theater which is regularly uses or utilizes fifteen percent (15%) or more of its total viewing time, for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or related to adult material as defined in this section.

d.) "Adult Motion Picture Drive-In" means an open air drive-in theater which is regularly used or utilized fifteen percent (15%) or more of its total viewing time, for presenting materials distinguished or characterized by an emphasis on matter depicting, describing, or related to adult material as defined in this section.

e.) "Adult Only Entertainment Establishment" means an establishment at which the patron directly or indirectly is charged a fee, and which features entertainment or services which constitute adult material as defined in this section, or which features exhibits, dance routines, or gyrational choreography of persons totally nude, topless, bottomless, or strippers, male or female impersonators or similar entertainment or services which constitute adult material and also includes private viewing booths.

f.) "Adult Materials" means any book, magazine, newspaper, pamphlet, poster, print, picture, slide, transparency, figure, image, description,

motion picture film, pornographic record or tape, other tangible thing, or any service, capable of arousing interest through sight, sound, or touch and

(i) which material is distinguished or characterized by an emphasis on matter displaying, describing, or representing sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination; or

(ii) which service is distinguished or characterized by an emphasis on sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination.

g.) Bottomless" means less than complete opaque covering of male or female genitals, pubic area or buttocks.

h.) "Massage parlor" means an establishment or place primarily in the business of providing massage services operated by anyone **not** a duly licensed medical doctor, osteopath, chiropractor, nurse, or physical therapist treating patients recommended by a licensed physician under a duly licensed physician's direction, or person practicing the art of massage on the face and hands in a duly licensed beauty parlor or barber shop.

i.) "Nude or Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area or buttocks, with less than complete, opaque covering of any portion thereof, or female breasts with less than a complete, opaque covering or any portion thereof below the top of the nipple, or of covered male genitals in a discernible turgid state.

j.) "Sexual Activity" means sexual conduct or sexual contact, or both.

k.) "Sexual Contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.

l.) "Sexual Excitement" means the condition of the human male or female genitals, when in a state of sexual stimulation or arousal.

m.) "Topless" means the showing of a female breast with less than a complete opaque covering of any portion hereof below the top of the nipple.

SECTION III. That the following provisions entitled "Section 6 Conditional Use Permit Required" shall be added to Article IV of the Zoning Ordinance for the Village of Custar:

"Section 6. Conditional Use Permit Required.

No building shall be erected, constructed, or developed and no building or premises shall be reconstructed, remodeled, arranged for use or used for any adult entertainment business unless authorized by the issuance of a conditional use permit in accordance with this Ordinance; an adult entertainment business shall comply with the following conditional use criteria:

A.) Adult entertainment businesses shall comply with the regulation applicable to all properties in any district in which they are located.

B.) No adult entertainment business shall be permitted in a location which is within 300 feet of another adult entertainment business.

C.) No adult entertainment business shall be permitted in a location which is within 300 feet of any church, any public or private school, any park, any playground, or any social services facility or neighborhood center.

D.) No adult entertainment business shall be permitted in a location which is within 300 feet of any residence or boundary of a residential district."

SECTION IV. That Article VIII of the Zoning Ordinance of the Village of Custar shall be amended as follows:

A.) The title of said Article shall be amended to read "Article VIII. Procedures and Requirements for Appeals, Variances, and Conditional Uses".

B.) That Section 13 of said Article VIII shall be adopted to read as follows:

"Section 13. Conditional Uses.

(a) Under the authorization granted in R.C. Chapter 713 To decide special exceptions to the terms of this zoning ordinance, the Board shall have the power to decide applications for conditional uses in those cases specified in Article IV of this Ordinance. In considering such application, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and may impose such requirements and conditions as the Board may deem necessary for the protection of adjacent properties in the public interest, including specific limitations as to future expansion.

(b) The following basic standards shall apply to conditional uses in any "commercial" district.

(1.) The location and size of the use, the nature and intensity of the operations involved in or conducted in connections with it. Its site layout and relation to streets giving access to it shall be such that vehicle traffic to and from the use will not be more hazardous than the normal traffic of the district, both at the time and as the same may be expected to increase with increasing development of the Village, taking into account vehicle turning movements and relation to route of traffic flow, relations to street intersections, site distances, and relation to pedestrian traffic.

(2.) The nature, location, size and site layout of the use shall be such that it will be a harmonious part of the district in which it is situated, taking into account prevailing shopping habits, convenience of access by perspective patrons, the physical and economical relationships of one type of use to another, and characteristics grouping of uses in a commercial or industrial district. The types and size of signs and marques advertising the business shall be of a size and character not to be offensive to the patrons of surrounding businesses which may include minors."

Section V. This Ordinance shall go into force and effect at the earliest time allowed by law.

PASSED: 12/11/02 6-0

Mary Ann Crawford
President of Council

ATTEST: Albert P. Grass
Clerk

APPROVED: 12-11-02
Date

Linda Bechstein
Mayor

CHESTER H. MARCIN
VILLAGE LEGAL COUNSEL